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No. 90-1886

In The

Supreme Court of the United States

October Term, 1991

RICHARDSON'S JEWELLRY (LLOYDMINSTER), LTD.,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeal In The State Of California, Fourth Appellate District, Division Three

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented, as framed in the Petition for Writ of Certiorari, is inaccurate and argumentative. The question is more properly framed as follows: Did the Respondent Court err in assuming jurisdiction over Petitioner, a foreign corporation, owner of an aircraft which crashed within Orange County, California, resulting in the deaths of five individuals?

PARTIES TO THE PROCEEDING BELOW

Respondents and Real Parties In Interest Michael Oran, Executor of the Estate of Anthony Deis, deceased; Margaret Kauzor, personal representative of the Estate of Kimberly Deis, Amanda Deis and Jaclyn Deis, all deceased; and Dennillia Bischoff, agree with Petitioner's statement of the parties to the proceeding below.

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BRIEF IN OPPOSITION

Respondents and Real Parties In Interest Michael Oran, Executor of the Estate of Anthony Deis, deceased; Margaret Kauzor, personal representative of the Estates of Kimberly Deis, Amanda Deis and Jaclyn Deis, all deceased; and Dennillia Bischoff, respectfully pray that the Petition for Writ of Certiorari be denied.

In the proceedings below, Petitioner Richardson's Jewellry, (Lloydminster), Ltd., unsuccessfully sought to quash service of the summons and complaint in this matter, asserting it lacked sufficient minimum contacts with California to permit the exercise of *in personam*

jurisdiction. The trial court denied the motion to quash service of the summons and complaint. Petitioner unsuccessfully sought a writ of mandate/prohibition from the California Court of Appeals, Fourth Appellate District, Division Three. When the California Court of Appeals denied the application for a writ of mandate/prohibition, Petitioner unsuccessfully sought a similar writ from the California Supreme Court.

The decision of the trial court is correct and supported by the record. There is no merit to the Petition.

JURISDICTION

Petitioner invokes jurisdiction pursuant to Title 28 § 1257(a) of the United States Code. Respondents contend that there is no jurisdiction in this Court under such section; and, in the alternative, that this case does not meet the standards for certiorari established in decisions of this Court.

STATUTORY PROVISIONS INVOLVED

Petitioner conveniently omits to state that California's "long arm" statute applies to this case. That statute, California Code of Civil Procedure § 410.10, is attached hereto as Appendix 1.

STATEMENT OF CASE

Petitioner is a Canadian corporation which owned an aircraft. Decedent Anthony Deis, represented herein by his executor, Michael Oran, was the President of Petitioner and a licensed pilot. On March 31, 1989, Mr. Deis, his wife, Marilyn Deis, and their three minor children, Kimberly, Amanda and Jaclyn Deis, were all killed in an aircraft accident near John Wayne Airport in Orange County, California. It is undisputed that the aircraft was owned at the time of the crash by Petitioner, a Canadian corporation, which also owned and operated a jewelry business in Canada.

It is also undisputed that Mr. Deis, his wife and his children were all Canadian citizens and domiciled in Alberta, Canada. It is further undisputed that the sole shareholders, officers and directors of Petitioner were Anthony Deis and his spouse Marilyn Deis.

Petitioner erroneously contends that, at the time of the crash, "the aircraft was on loan to the deceased pilot and his family." There is no evidence whatsoever in the record of any "loan" of the aircraft.

A special appearance was made below by Petitioner, seeking to quash service of the complaint pursuant to Section 418.10(a) of the California Code of Civil Procedure.

Petitioner initially contended that it did not have "minimum contacts" with California because it had not done business in California. However, Real Parties In Interest contended that the basis for jurisdiction over

Petitioner rested not on its having done business in California but on its having owned the aircraft which caused the fatal accident, and on other factors.

Petitioner below argued that the only contact with the forum was the "unilateral acts" of its own President, decedent Anthony Deis. This argument is without merit for reasons stated *infra*.

ARGUMENT

1. The Petition Should be Denied Because The Ruling Below is Not Inconsistent With Any Previous Decision of This Court.

Petitioner cites *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) as authority for its position. This case was never cited to the trial court below, nor was it cited in the Petition For Writ of Mandate/Prohibition to the California Court of Appeals. The case involved a breach of contract claim by a Florida Corporation in a Florida court against a Michigan-based franchisee, concerning the operation of a Burger King restaurant in Michigan. This Court held that Michigan franchisees could be forced to defend an action in Florida. The case has nothing to do with a factual situation such as this, where a foreign corporation owns property that causes personal injuries in another state. Indeed, the language cited by Petitioners is *dicta* in the *Burger King Corp.* opinion. This Court held that the defendant in *Burger King* "reached out beyond" Michigan and negotiated with a Florida corporation for the purchase of a long term franchise, intending to take the benefit of that arrangement. 471 U.S. 479-480. There

were no alleged "unilateral" activities by third parties in *Burger King*.

In this case there is no "unilateral activity of another or a third person." The so-called "unilateral activity" was the actions of the *President* of Petitioner, who hardly qualifies as a "third party." Petitioner was free to prohibit its officers from using the aircraft outside Canada. It never did so. Corporations can only act through their officers, employees and agents. Even assuming the aircraft was in California on a vacation, such a purpose is not inconsistent with the corporate ownership of the aircraft. Corporate officers are entitled to take vacations and do so to benefit the corporation for whom they work. Even if the corporate aircraft arrived in California on a pleasure trip, it remained the property of the corporation.

2. Maintenance of This Suit Against Petitioner Would Not Offend Traditional Notions of Fair Play and Substantial Justice.

This Court, in *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286 (1980) stated:

> A state court may exercise personal jurisdiction over a nonresident defendant so long as there exist 'minimum contacts' between the defendant and the foreign state [citation omitted] . . . The protection against inconvenient litigation is typically described in terms of 'reasonableness' or 'fairness.' We have said that the defendants' contact with the foreign state must be such that maintenance of the suit 'does not offend traditional notions of fair play and substantial justice.' [Citation omitted.]

Id. at 291-292. Indeed, the Court in *Worldwide Volkswagon* went on to state that the limits imposed by the due process clause have been relaxed over the years. *Id.* at 292.

The State of California enacted California Code of Civil Procedure § 410.10, a copy of which is attached hereto as Appendix 1, to ensure the most expansive scope of jurisdiction possible within Constitutional restraints. The Judicial Council comments to that section state in part:

> . . . a state has power to exercise judicial jurisdiction over a foreign corporation which has owned, used or possessed a chattel in the state with respect to any cause of action arising from the chattel while it was in the state and was so owned, used or possessed, unless the nature of the chattel and the foreign corporation's relationship to the state make the exercise of such jurisdiction unreasonable.

Judicial Council comments to California Code of Civil Procedure § 410.10 at p. 482 (West's 1991). This comment is drawn almost verbatim from the *Restatement, Second, Conflict of Laws* § 51 (1971).

The comments to *Restatement, Second, Conflict of Laws* § 38 (1971) support jurisdiction in this case:

> Judicial jurisdiction may be exercised over an individual as to causes of action arising from his use or possession within the state of a chattel which is of a sort dangerous to life or tangible things. By using or possessing such a chattel in a state, the individual endangers the interests of other persons in the state and can fairly be required to stand suit in the state for any injury

> that may result. The chattel need not be peculiarly dangerous, as is a bomb or explosive. It need only be of a sort from which liability in tort for personal injury is not unlikely to arise, as is true, for example, of most kinds of mechanized equipment.

See, comment (c) to section 38, *Restatement, Second, Conflict of Laws*. The comment then gives an example of injuries to a child arising from a tractor owned by a nondomiciled individual. The state where the accident occurred would have jurisdiction to hear a dispute between the injured person and the owner of the chattel. *Restatement, Second, Conflict of Laws* § 51, which applies to corporations, states that "the rule here is the same as that which is applicable to individuals." *See*, comment (a) to *Restatement, Second, Conflict of Laws* § 51.

All of the above Restatement provisions were cited to the courts below. Those courts clearly agreed with Respondents' arguments. Petitioner conveniently omits from the Petition any reference to California Code of Civil Procedure § 410.10 and these provisions.

Further, it is not unreasonable to compel Richardson's to defend this action in California. The most important witnesses (eye witnesses to the crash and federal investigators) are in California. Additionally, a California based defendant, Martin Aviation, Inc., serviced and refueled the aircraft immediately prior to the accident. The estates of the Canadian decedents chose to bring the action in California, and a related action by the deceased wife of Anthony Deis also is ongoing in California. That action names Anthony Deis' estate as a defendant. Because Respondent Oran, as executor of Anthony

Deis' estate, is being required to defend the action by the estate of Mrs. Deis, he may be subject to a judgment in California on that action. Mr. Deis' estate will have indemnity rights back against Petitioner. If Petitioner is not compelled to defend in California, Anthony Deis' estate may be subject to conflicting or inconsistent results because it would have to litigate its indemnity action elsewhere.

3. The Court Lacks Jurisdiction Because There is an Independent and Adequate State Ground for the Decision.

The basic dispute in this case is over the interpretation of a California statute, Code of Civil Procedure § 410.10. Petitioner erroneously tries to cast the argument in terms of federal due process issues. In fact, Petitioner does not even mention the California "long arm" statute in the Petition. Nonetheless, that statute was urged below by Respondents, and the trial court, appellate court and California Supreme Court all agreed with Respondents. With all due respect to this Court, the question here is the application of the California statute to the facts of this case. No federal question is presented.

4. This Case Does Not Fulfill the Court's Standards for Grant of Certiorari of State Court Judgments.

Even if a federal question exists in this case, that fact, standing alone, is not sufficient for this Court to invoke its power of certiorari.

The only basis urged in the Petition for the granting of the writ is the alleged inconsistency between the decision below and a single opinion of this Court, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). However, there is no conflict as the facts of this case differ substantially from the facts in *Burger King*.

This case involves a tragic but, from the legal standpoint, unexceptional set of circumstances: the crash of a private plane resulting in the deaths of five people. The Canadian corporation does not want to defend in California for reasons best known to it. Nonetheless, it owned the aircraft that crashed in California; its President was the pilot of the aircraft; the eyewitnesses to the crash and investigators are all in California; the last entity to service and refuel the aircraft is in California; and the estates of the decedents wish to have the litigation occur in California.

Contrary to the argument of Petitioner, California *does* have a legitimate interest in providing a forum for persons injured by unsafe chattels being operated within its boundaries. The *Restatement, Second, Conflict of Laws* specifically so provides. The arguments of Petitioner to the contrary are without merit.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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July 3, 1991

APPENDIX 1

California Code of Civil Procedure Section 410.10 "Basis."

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.
